

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 11<sup>th</sup>  
day of April, 2012.

Halo Wireless, Inc.,

Complainant,

v.

Craw-Kan Telephone Cooperative, Inc.,

Ellington Telephone Company,

Goodman Telephone Company,

Granby Telephone Company,

Iamo Telephone Company,

Le-Ru Telephone Company,

McDonald County Telephone Company,

Miller Telephone Company,

Ozark Telephone Company,

Rock Port Telephone Company,

Seneca Telephone Company,

Alma Communications Company, d/b/a Alma Telephone Company,

Choctaw Telephone Company;

MoKan Dial, Inc.,

Peace Valley Telephone Company, Inc.,

and,

Southwestern Bell Telephone Company, d/b/a AT&T Missouri

Respondents.

**File No: TC-2012-0331**

**ORDER REGARDING PENDING MOTIONS AND SETTING  
PROCEDURAL CONFERENCE**

Issue Date: April 11, 2012

Effective date: April 11, 2012

**Background**

On April 2, 2012, Halo Wireless, Inc. filed this complaint pursuant to the Commission's Enhanced Record Exchange Rules ("ERER") in response to traffic

blocking requests made by the Non-AT&T Respondents with AT&T Missouri.<sup>1</sup> The blocking requests were also made pursuant to the EREER,<sup>2</sup> were sent to AT&T by the Non-AT&T Respondents, which in turn provided notices to Halo on February 23, 2012, March 13, 2012, and March 26, 2012.<sup>3</sup> AT&T Missouri also sent its own notice of intent to block Halo Traffic under a different provision of the EREER, with blocking to begin on April 25, 2012. Once Halo filed its complaint, and in compliance with the EREER, AT&T Missouri filed notice that its blocking preparations had ceased.

In its complaint, Halo has prayed for alternative forms of relief, the first of which is to stay this proceeding until the Bankruptcy Court rules on the propriety of the blocking notices. In the alternative, *inter alia*,<sup>4</sup> Halo requests the Commission to grant expedited consideration of its complaint pursuant to Commission Rules 4 CSR 240-29.120(5) and .130(9).

Shortly after the Commission issued notice of the complaint, Respondents Alma Communications Company d/b/a Alma Telephone Company, Choctaw Telephone Company, and MoKan Dial, Inc. (collectively “Alma Movants”) filed a motion to dismiss and requested expedited treatment on that motion. The Alma Movants allege that Halo’s complaint is insufficient because (1) it was not filed immediately as required by

---

<sup>1</sup> Chapter 29 of 4 CSR 240.

<sup>2</sup> Specifically 4 CSR 240-29.0120, .0130

<sup>3</sup> Halo’s traffic was scheduled to be blocked commencing on April 3, April 12, and April 24, 2012, respectively.

<sup>4</sup> Halo prays for seven different alternative forms of relief and requests the Commission to declare that it is not required to pay any costs associated with the blocking notices. Halo’s primary arguments center on the theories that the Commission’s rules do not apply to it, and that the Commission lacks jurisdiction over Halo, because Halo is a wireless commercial radio service (“CMRS”) provider subject only the regulatory authority of the Federal Communications Commission. Halo claims it is not an originating carrier or traffic aggregator under the EREER because it is not a telecommunication company pursuant to Section 386.020(53), RSMo Supp 2010.

the ERER;<sup>5</sup> (2) it fails to refute the specific grounds for the blocking requests;<sup>6</sup> and, (3) it fails to include a request for expedited resolution.

In response to these filings, the Commission set deadlines for: (1) responses to Halo's request to stay this proceeding; (2) answers to the complaint; (3) Staff's investigation Report; and, (4) responses to the Alma Movants' motion to dismiss. On April 5, 2012, the Alma Movants responded to Halo's request to stay this proceeding until the Bankruptcy Court rules on the propriety of the blocking notices. On April 9, 2012, responses were filed by AT&T Missouri, the Commission's Staff, and the Craw-Kan Respondents.<sup>7</sup> Also on April 9, 2012, Halo, sought leave to amend its complaint, repeated its request for expedited treatment of this matter, and replied to the Respondents' filings.

### **The Alma Movants' Motion to Dismiss**

The Alma Movants are correct in that the Commission's ERER does state that if the target of the blocking request disputes the blocking "the originating carrier and/or traffic aggregator should immediately seek action by the commission through the filing of

---

<sup>5</sup> The Alma Movants also provided return receipts establish that Halo received their notices on February 24, 2012.

<sup>6</sup> The Alma Movants list their grounds for blocking as:

- a. Halo failed to pay invoices for post-bankruptcy termination services;
- b. Halo sent landline-originated traffic under the auspices of a CMRS/ILEC interconnection agreement;
- c. Halo interLATA traffic was placed on the LEC-LEC-network for termination to Movants;
- d. Some traffic was originated with use of feature group D protocol trunking arrangements;
- e. Halo failed to provide, or altered, originating caller identification information; and
- f. the FCC had ruled that the Halo/Transcom attempt to "reoriginate" landline traffic over a wireless link did not convert landline originated traffic to CMRS originated calls.

<sup>7</sup> The Craw-Kan Respondents are: Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Goodman Telephone Company, Granby Telephone Company, Iamo Telephone Company, McDonald County Telephone Company, Miller Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, and Peace Valley Telephone Company, Inc.

formal complaint,”<sup>8</sup> However, the Commission’s EREER does not define the term “immediate.” “Immediate” is defined as “occurring at once . . . or of or near the present time.”<sup>9</sup> Black’s Law Dictionary further refines this definition to include: “A reasonable time in view of the particular facts and circumstances of [the] case under consideration.”<sup>10</sup>

Halo responds that it sent a letter to the Respondents on March 15, 2012 explaining its position and requesting the Respondents to articulate a proper legal basis for applying the EREER rules by March 30, 2012. The Respondents apparently did not respond to Halo’s letter and did not articulate their grounds for the blocking requests. While Halo did not file the complaint until April 2, 2012, or some 38 days after receiving the first of several blocking notices from the Alma Movants, that delay, under the particular facts and circumstances of this case, is not an unreasonable response time; especially in light of the complexity of this matter<sup>11</sup> and Respondents having not replied to Halo’s letter.

Additionally, Halo argues that it is not an originating carrier or a traffic aggregator and that the EREER does not apply. Indeed, the gravamen of Halo’s arguments center around its theories of this Commission lacking jurisdiction to make any determination regarding its operations, and those assertions do effectively refute the grounds alleged by the Alma Movants alleged grounds for blocking – although as previously noted, Halo

---

<sup>8</sup> Commission Rules 4 CSR 240-29.120(5) and 29.130(9).

<sup>9</sup> *The American Heritage College Dictionary*, 3<sup>rd</sup> Ed., p. 678, Houghton Mifflin Company, NY, 1997.

<sup>10</sup> *Black’s Law Dictionary*, 6<sup>th</sup> Ed, p. 749, West Group, St. Paul, 1991.

<sup>11</sup> Indeed, the Commission currently has four inter-related actions with regard to Halo’s activities; File Numbers IC-2011-0385, TC-2011-0404, TO-2012-0035 and TC-2012-0331. There are numerous forms of relief and defenses raised in these matters, all relating to Halo’s business activities, and further complicating these proceedings is Halo’s pending actions with the federal bankruptcy court.

was apparently not appraised of Respondent's specific grounds for the blocking requests until the Alma Movants filed their motion to dismiss.

Finally, while Halo does state in paragraph 7 of its complaint that it is not voluntarily seeking relief from this Commission, but rather is filing the complaint as the required response to the Respondents' blocking attempts, contrary to the Alma Movants' contention, Halo did request expedited consideration of its complaint as required by the EREL.<sup>12</sup> Halo was also granted leave to amend its complaint and made clear it was requesting expedited resolution of this matter.

Having failed to establish any of its alleged technical grounds for dismissal, the Commission will deny the Alma Movants' motion to dismiss. The Commission also believes reaching the merits of the complaint will better serve administrative economy and ensure all parties receive due process.

### **Halo's Request to Stay**

With regard to Halo's request to stay this action pending the Bankruptcy Court's determination, the Alma Movants, AT&T Missouri, the Craw-Kan Respondents and the Commission's Staff point out that on October 26, 2011, the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division, ruled that the automatic stay did not apply to Missouri's EREL proceedings, or to the Halo-AT&T interconnection agreement. The Court stated:

"any regulatory proceedings in respect of the matter described in the AT&T Motion, including the State Commission Proceedings, may be advanced to a conclusion and a decision in respect of such regulatory matter may be rendered; provided however, that nothing herein shall permit, as part of such proceedings:

A. Liquidation of the amount of any claim against the Debtor; or

---

<sup>12</sup> See Item "B" in Halo's Prayer for Relief.

- B. Any action which affects the debtor-creditor relationship between the Debtor and any creditor or potential creditor (collectively, the “reserved matters”); . . .

The bankruptcy court’s order was not stayed, and the Alma Movants AT&T Missouri, the Craw-Kan Respondents and the Commission’s Staff claim that blocking Halo’s traffic neither liquidates a claim amount or affects the debtor-creditor relationship that pre-existed the block.<sup>13</sup>

Halo first clarifies that it is not asking the Commission to stay the instant proceeding, but rather that it simply recognize the automatic stay already imposed by the Bankruptcy Code.<sup>14</sup> Halo also argues that a debtor-creditor relationship would be affected because blocking their traffic would block the performance of AT&T Missouri under the Interconnection Agreement between it and AT&T Missouri.

The Craw-Kan Respondents further argue that Halo may be blocked for post-bankruptcy non-payment and ERO violations. Thus, although Halo’s bankruptcy may prevent Respondents from ever being compensated for Halo’s pre-bankruptcy traffic, bankruptcy law does not allow Halo to continue: (a) receiving service and using Respondents’ rural Missouri networks without payment, or (b) violating the Commission’s ERO.

While the Commission is not convinced that any debtor-creditor relationship would be affected by blocking Halo’s traffic, the Commission finds this later argument by

---

<sup>13</sup> The Alma Movants further point out that the Tennessee Regulatory Authority entered an order permitting AT&T to block Halo’s traffic from the entire state of Tennessee and the Bankruptcy Court found no violation of the automatic stay.

<sup>14</sup> Curiously, Halo has not sought any relief from the federal courts in relation to its “Notice of Violation of Automatic Stay” that it filed with the Bankruptcy Court in response to the blocking requests. Halo states the burden is on Respondents to seek relief with the Bankruptcy Court in this regard. However, Respondent AT&T Missouri points out that when Halo sought relief on similar grounds with the Bankruptcy Court when AT&T blocked Halo’s traffic Tennessee, that relief was denied, and because of this, AT&T believes Halo purposely did not request relief from the Bankruptcy Court.

the Craw-Kan Respondents to be most persuasive. Moreover, the Commission observes that the plain language of the bankruptcy code makes clear that the automatic stay does not apply to judicial proceedings initiated by the debtor.<sup>15</sup> Halo initiated this complaint, not Respondents. Halo's request to stay this proceeding will be denied.

The Commission has already set a deadline for answers to the complaint and for its Staff to file a report of its investigation into the complaint. The Commission will now set a procedural conference and ultimately set a procedural schedule to consider the merits of the complaint on an expedited schedule.

**THE COMMISSION ORDERS THAT:**

1. Respondents Alma Communications Company d/b/a Alma Telephone Company's, Choctaw Telephone Company's, and MoKan Dial, Inc.'s motion to dismiss is denied.

2. Halo Wireless, Inc.'s request to stay this proceeding until the Bankruptcy Court rules on the propriety of the blocking notices is denied.

3. A procedural conference shall be held on Thursday, May 3, 2012, beginning at 3:00 p.m. The prehearing conference will be held in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. The conference will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. Any person requiring additional accommodations to participate in this conference shall call the Missouri Public Service Commission's Hotline at

---

<sup>15</sup> *Brown v. Armstrong*, 949 F.2d 1007, 1009-1010 (8<sup>th</sup> Cir. 1991). "As the court said in *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7<sup>th</sup> Cir.1989): The fundamental purpose of bankruptcy ... is to prevent creditors from stealing a march on each other ... and the automatic stay is essential to accomplishing this purpose. There is, in contrast, no policy of preventing persons whom the bankrupt has sued from protecting their legal rights." *Id.*

800-392-4211 (voice) or Relay Missouri at 711 before the hearing. Any party wishing to attend the procedural conference by phone shall call into the Commission's phone bridge at 573-522-5993 at the time of the conference.

4. This order is effective upon issuance.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed  
Secretary

( S E A L )

Gunn, Chm., Jarrett and Kenney, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge